

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

JOHN AUSTIN JACOBS

v.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 5:19-CV-00123-RWS

**ORDER**

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 32), which contains her findings, conclusions and recommendations for the disposition of this matter. Petitioner John A. Jacobs, proceeding *pro se*, filed the above-captioned civil action to petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 4. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. After review of the petition and evidence, the Magistrate Judge issued a Report recommending the petition (Docket No. 4) be denied. Docket No. 32. The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

The Report and Recommendation was mailed to the Petitioner at his last known address. To date, Petitioner has not acknowledged receipt of the Report, the mailed Report has not been returned as undeliverable, Petitioner has not updated his address with the Court and no objections to the Report and Recommendation have been filed.<sup>1</sup>

Petitioner is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, Petitioner is barred from appellate review of the unobjected-to factual findings and legal

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<sup>1</sup> Under the Local Rules of the Eastern District of Texas, *pro se* litigants must provide the court with a physical address and are "responsible for keeping the clerk advised in writing of the current physical address." Local Rule CV-11(d).

conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *see also Arriaga v. Laxminarayan*, No. 4:21-CV-00203-RAS, 2021 WL 3287683, at \*1 (E.D. Tex. July 31, 2021) (noting Plaintiff was not entitled to *de novo* review of the Magistrate Judge’s findings where Plaintiff did not acknowledge receipt of the Report and Recommendation or file any objections thereto).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”), *cert. denied*, 492 U.S. 918 (1989); *see also United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants . . . .’”) (quoting *Mathews v. Weber*, 423 U.S. 261, 275 (1976)).

Additionally, the Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004).

To make a substantial showing, the petitioner need not demonstrate he would prevail on the merits. Rather, he must demonstrate (1) that the issues are subject to debate among jurists of reason, (2) that a court could resolve the issues in a different manner or (3) that the questions raised

are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *see also Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

Here, Petitioner has not shown that any of the issues raised by his petition are subject to debate among jurist of reasons. Nor has he shown that the questions presented are worthy of encouragement to proceed further. Petitioner has, therefore, failed to make a sufficient showing to merit the issuance of a certificate of appealability. Thus, a certificate of appealability will not be issued. Accordingly, it is


**ORDERED** that the Report of the Magistrate Judge (Docket No. 32) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that Petitioner’s Petition for Writ of Habeas Corpus (Docket No. 4) is **DENIED**. It is further

**ORDERED** that Petitioner’s above-titled cause is **DISMISSED WITHOUT PREJUDICE**. It is further

**ORDERED** that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

**So ORDERED and SIGNED this 24th day of May, 2022.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE